



Public Health Division
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NOTE TO LANCE HODAHKWEN
IHS Privacy Act Coordinator

Re: Privacy Act Violations under IHS Compacts

The IHS has included in its compacts with various tribes that the Privacy Act (5 USC 552a) requirements shall apply to the medical records maintained by the tribe under the compact.

The Privacy Act directs in § 552a(m) that agencies shall cause the Act's requirements to be applied to any contract for the operation on behalf of the agency of a system of records to accomplish an agency function. Twenty years ago, we advised that the requirements of the Privacy Act must be made applicable to the medical records of IHS beneficiaries treated under contract.^{1/} It appears that IHS seeks to treat tribes which agree to operate a medical records system by compact the same as it treated tribes which agreed to provide care by contract.^{2/} Unless and until a court holds otherwise, we are of the view that for purposes of the Privacy Act, the IHS may treat medical records established under a compact agreement as if the records system were established under a contract.

Equating the compact with a contract subject to the Privacy Act has ramifications for the compact tribe. At the outset, we note that the compact tribe's medical records are deemed part of the IHS medical records system and as such are governed by the IHS system notice. Moreover, the system manager for the IHS medical records system, which includes the tribe's medical records, is an IHS employee. Finally, the PHS General Administration Manual contains provisions relating to alleged violations of the Privacy Act by HHS contractors. It would follow that those manual provisions would be applied to compact organizations.

Howard Walderman
Senior Attorney

^{1/} Memorandum, GH (Walderman) to HSA (Kugajevsky) 6/27/75.
Accord, Memorandum GCB (Goggin) to Director, IHS, 3/8/76.

^{2/} These contractors were not subject to the Self-Determination Act Amendments of 1994 which state that records of the contractor are not Federal records for purposes of the chapter 5 of title 5 USC. See Memorandum GH (McCloud) to Director, IHS 7/27/95.